

AGREEMENT BETWEEN CITY OF SUNNYVALE AND THE SUNNYVALE SISTER CITY ASSOCIATION

THIS AGREEMENT, dated May 2, 2018, is by and between the CITY OF SUNNYVALE ("CITY"), a municipal corporation, and the Sunnyvale Sister City Association ("SSCA"), a 501(c)(3) nonprofit organization.

WHEREAS, the CITY desires to support independent organizations providing services beneficial to the Community; and,

WHEREAS, SSCA was established to assist in enhancing the Sunnyvale community's relationship with international cities, and wishes to provide nonprofit services associated with sister city goals and interests to benefit the CITY; and

WHEREAS, SSCA's goals and services are not otherwise offered or duplicated by the City of Sunnyvale; and,

WHEREAS, SSCA desires to use, and City is willing to provide certain Sunnyvale Department of Library and Community Services facilities at no cost for purposes related to facilitation of sister city interests and activities;

NOW THEREFORE, in accordance with the CITY's Policy 7.2.4 - Relationships with Outside GROUPS, the CITY and SSCA ("PARTIES") enter into this agreement.

1. Obligations of CITY

CITY shall:

- a) Provide SSCA use of the Community Center Ballroom for up to four hours (includes set-up and clean-up time) during peak hours one time per fiscal year for SSCA organized meetings, programs or events at no charge to SSCA, based on availability;
- b) Provide SSCA use of the Community Center Ballroom for up to four hours (includes set-up and clean-up time) during off-peak hours one time per fiscal year for SSCA organized meetings, programs or events at no charge to SSCA, based on availability;

Peak hours are from Friday at 6 p.m. through midnight on Sunday and off-peak hours are any time Monday through Thursday and Friday until 6 p.m.

2. Obligations of SSCA

- a) SSCA volunteers must volunteer at least 39 hours each year at City sponsored events, including but not limited to:
 - a. Hosting an information booth and interactive activity at the annual State of the City,
 - b. Coordinating and managing a Japanese themed art-related workshop booth at the
 - c. Hands on the Arts children's festival,
 - d. Volunteering at Columbia Neighborhood Center's Family Fun Day or Fit and Fun Fair, or
 - e. Hosting workshops at the Sunnyvale Public Library.
- b) SSCA will be required to submit a plan to the City each year outlining how they will achieve the total number of hours required. The dollar value of the required volunteer

hours is equivalent to the maximum value of facility rental being provided to SSCA each year. Any member of SSCA staff volunteering at a city-sponsored event must comply with the City's fingerprinting and background check requirements for volunteers, and SSCA may not assign anyone who has not completed that process to volunteer at a city event.

3. Conflicts of Interest

No officer or employee of CITY shall have any interest, direct or indirect, in this Agreement or in the proceeds thereof. During the term of this Agreement, SSCA shall not accept employment or an obligation which is inconsistent or incompatible with SSCA's obligations under this Agreement.

4. Compliance with Laws

- a) SSCA shall not discriminate against any employee or applicant for employment because of race, religion, creed, color, gender, age (persons 40 years of age or older), disability, national origin, sexual orientation, or any other basis to the extent prohibited by federal, state or local law.
- b) During the term of this Agreement SSCA shall comply with all applicable federal, state and local laws and regulations relating to the provision of the Services. SSCA shall also comply with all City policies, including but not limited to the Library and Community Services Division Contractor Handbook, unless, taking into consideration all of the surrounding facts and circumstances, a policy or policies or a portion of a policy does not reasonably apply to SSCA. SSCA shall provide the Services in a manner that complies with the Americans with Disabilities Act (ADA) including but not limited to Title II's program access requirements, and all other applicable federal, state and local disability rights legislation. SSCA hereby acknowledges and agrees that it accepts all risks and responsibilities for its failure to comply with any law, regulation, or applicable policy and shall indemnify City under the provisions of section 9 (Indemnification) of this Agreement for all liability, loss, damage and expense (including reasonable attorneys' fees) resulting from or arising out of SSCA's failure to comply with such laws, regulations or policies.

5. Independent Contractor

This Agreement is by and between two independent entities that have an independent contractual relationship. SSCA shall provide all services under this Agreement as an independent contractor, and neither party shall have the authority to bind or make any commitment on behalf of the other. City does not retain the right to control the means or the method by which SSCA performs work under this Agreement. Nothing contained in this Agreement shall be deemed to create any association, partnership, joint venture or relationship of principal and agent, master and servant, or employer and employee between the City and SSCA and any of their employees, agents, affiliates or other representatives, or between the City and any individual assigned by SSCA to perform any services for the City. SSCA or any agent or employee of SSCA is liable for the acts and omissions of itself, its employees and its agents. SSCA's shall be responsible for all obligations and payments, whether imposed by federal, state or local law, including, but not limited to, FICA, income tax withholdings, unemployment compensation, insurance, and other similar responsibilities related to SSCA's performing services and work, or any agent or employee of SSCA providing same. SSCA shall be solely responsible for SSCA organized meetings, programs or events, which shall not be considered city-sponsored.

6. Indemnity

Except as to the sole negligence or willful misconduct of the indemnified party, SSCA shall defend, indemnify and hold the CITY and its officers, employees, agents, and volunteers harmless from any and all loss, damage, claim for damage, liability, expense, or cost, including attorneys' fees which arises out of or is in any way connected with the performance of services under this Agreement by SSCA or any of SSCA's employees, agents, subcontractors, or volunteers, and from all claims by SSCA's employee's, subcontractors, agents, or volunteers for compensation for services rendered to SSCA in the performance of this Agreement, notwithstanding that the CITY may have benefitted from their services. This indemnification provision shall apply to any acts or omissions, willful misconduct or negligent conduct, whether active or passive, on the part of SSCA or of SSCA's employees, subcontractors, agents, or volunteers.

7. Insurance

SSCA shall take out and maintain during the life of this Agreement policies of insurance as specified in Exhibit "A" attached and incorporated by reference, and shall provide all certificates or endorsements as specified in Exhibit "A."

The City of Sunnyvale is now using the online insurance program PINS Advantage. SSCA will receive an email from the City's online insurance program requesting SSCA to forward the email to your insurance provider(s).

8. CITY Representative

The Superintendent of Community Services or such other person as may be designated by the Director of Library and Community Services of CITY shall represent CITY as the City Manager's authorized representative in all matters pertaining to the services to be rendered under this Agreement. All requirements of CITY pertaining to the services and materials to be rendered under this Agreement shall be coordinated through the CITY representative.

9. SSCA Representative

SSCA President shall represent SSCA in all matters pertaining to the services and materials to be rendered under this Agreement; all requirements of SSCA pertaining to the services or materials to be rendered under this Agreement shall be coordinated through the SSCA representative.

10. Notices

All notices required by this Agreement shall be in writing, and shall be personally delivered, sent by first class mail with postage prepaid, or by commercial courier, addressed as follows:

To CITY: Cynthia E. Bojorquez, Director of Library and Community Services
CITY OF SUNNYVALE
P.O. Box 3707
Sunnyvale, CA 94088-3707
408-730-7314

To SSCA: Mark Kato, President
Sunnyvale Sister City Association
440 North Wolfe Road
Sunnyvale CA 94085
408-505-7349

Nothing in this provision shall be construed to prohibit communication by more expedient means, such as by telephone, email or fax transmission, to accomplish timely communication. However, to constitute effective notice, the expedient means of communication (eg. telephone, email, fax) must be followed by written confirmation of those communications. Written confirmation must be sent by first class mail, commercial carrier or hand delivered. Each party may change the address by written notice in accordance with this paragraph. Notices delivered personally shall be deemed communicated as of actual receipt; mailed notices shall be deemed communicated as of three days after mailing, unless such date is a date on which there is no mail service. In that event communication is deemed to occur on the next mail service day.

11. Assignment

Neither party shall assign or sublet any portion of this Agreement without the prior written consent of the other party.

12. Duration of Agreement

This Agreement shall continue from the date of execution for a period of three (3) years, unless otherwise terminated in accordance with section 13 below. The City Manager has the option and is authorized to execute extensions of this agreement for two (2) two-year terms, provided SSCA has performed its responsibilities under this Agreement to CITY's reasonable satisfaction.

13. Termination

- a) If SSCA defaults in the performance of this Agreement, or materially breaches any of its provisions, CITY at its option may terminate this Agreement by giving ten (10) days written notice to SSCA.
- b) Without limitation to such rights or remedies as CITY shall otherwise have by law, either party shall have the right to terminate this Agreement for any reason upon ninety (90) days' written notice to the other party.

14. Entire Agreement; Amendment

This writing constitutes the entire agreement between the PARTIES relating to the services to be performed or materials to be furnished hereunder. No modification of this Agreement shall be effective unless and until such modification is evidenced by writing signed by all PARTIES.

15. Miscellaneous

- a) Time shall be of the essence in this Agreement.
- b) Failure on the part of either party to enforce any provision of this Agreement shall not be construed as a waiver of the right to compel enforcement of such provision or any other provision.
- c) This Agreement shall be governed and construed in accordance with the laws of the State of California. Venue shall be Santa Clara County, California.
- d) Audit and Inspection of Records. SSCA agrees to maintain and make available to the City, during regular business hours, accurate books and accounting records relating to its Services. SSCA will permit City to audit, examine and make excerpts and transcripts from such books and records, and to make audits of all invoices, materials, payrolls, records or personnel and other data related to all other matters covered by this Agreement, whether funded in whole or in part under this Agreement. SSCA shall maintain such data and records in an accessible location and condition for a period of not fewer than five years after final payment under this Agreement or until after final audit has been resolved, whichever is later.

IN WITNESS WHEREOF, THE PARTIES HAVE EXECUTED THIS AGREEMENT

APPROVED AS TO FORM:

CITY OF SUNNYVALE

Michael Wong 5-8-18
City Attorney Date

Kent Steffens 5/08/18
City Manager Date

CITY OF SUNNYVALE

SUNNYVALE SISTER CITY ASSOCIATION

Cynthia E. Bojorquez 5/3/18
Director, Library and Community Services Date

Mark Kato 5/2/18
President, Sunnyvale Sister City Association Date

EXHIBIT A INSURANCE REQUIREMENTS FOR SSCA

SSCA shall procure and maintain for the duration of the contract insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work by the SSCA, its agents, representatives, or employees.

Minimum Scope and Limits of Insurance. SSCA shall maintain limits no less than:

1. **Commercial General Liability:** \$1,000,000 per occurrence and \$2,000,000 aggregate for bodily injury, personal injury and property damage. ISO Occurrence Form CG 0001 or equivalent is required.
2. **Automobile Liability:** \$1,000,000 per accident for bodily injury and property damage. ISO Form CA 0001 or equivalent is required.
3. **Workers' Compensation** Statutory Limits and **Employer's Liability:** \$1,000,000 per accident for bodily injury or disease.

Industry Specific Coverages. If checked below, the following insurance is also required:

- ☐ Professional Liability Insurance / Errors and Omissions Liability in the minimum amount of \$1,000,000 per occurrence.
- ☐ If working directly with children, SSCA's Certificate of Insurance must include coverage for molestation and sexual abuse in the minimum amount of \$1,000,000 per occurrence and \$2,000,000 aggregate. In the event that Abuse & Molestation Liability coverage is provided via a Claims Made Policy, the coverage shall include a minimum of a five year extended reporting clause.
- ☐ Pollution Liability Insurance in the minimum amount of \$1,000,000 per occurrence
- ☐ MCS-90 Endorsement to Business Automobile insurance for transportation of hazardous materials and pollutants
- ☐ Builder's Risk / Course of Construction Insurance in the minimum amount of \$_____.

Deductibles and Self-Insured Retentions

Any deductibles or self-insured retentions must be declared and approved by the City of Sunnyvale. SSCA shall guarantee payment of any losses and related investigations, claim administration and defense expenses within the deductible or self-insured retention.

Other Insurance Provisions

The **general liability** and automobile liability policies (and if applicable, pollution liability, sexual abuse and molestation, and builder's risk policies) shall contain, or be endorsed to contain, the following provisions:

1. The City of Sunnyvale, its officials, employees, agents and volunteers are to be covered as additional insureds with respects to liability arising out of activities performed by or on behalf of the SSCA; products and completed operations of the SSCA; premises owned, occupied or used by the SSCA; or automobiles owned, leased, hired or borrowed by the SSCA. The coverage shall contain no special limitations on the scope of protection afforded to the City of Sunnyvale, its officers, employees, agents or volunteers.
2. For any claims related to this project, the SSCA's insurance shall be primary. Any insurance or self-insurance maintained by the City of Sunnyvale, its officers, officials, employees, agents and volunteers shall be excess of the SSCA's insurance and shall not contribute with it.
3. Any failure to comply with reporting or other provisions of the policies including breaches of warranties shall not affect coverage provided to the City of Sunnyvale, its officers, officials, employees, agents or volunteers.
4. The SSCA's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
5. Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, ~~cancelled~~ by either party, reduced in coverage or in limits except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the City of Sunnyvale.
6. The policy limits of coverage shall be made available to the full limits of the policy. The minimum limits stated above shall not serve to reduce the SSCA's policy limits of coverage. Therefore, the requirements for coverage and limits shall be (1) the minimum coverage and limits specified in this agreement, or (2) the broader coverage and maximum limits of coverage of any insurance policy or proceeds available to the named insured, whichever is greater.

Acceptability of Insurers

Insurance is to be placed with insurers with a current A.M. Best's rating of not less than A:VII, unless otherwise acceptable to the City of Sunnyvale.

Verification of Coverage

SSCA shall furnish the City of Sunnyvale with original a Certificate of Insurance effecting the coverage required. The certificates are to be signed by a person authorized by that insurer to bind coverage on its behalf. All certificates are to be received and approved by the City of Sunnyvale prior to commencement of work.

Subcontractors

SSCA shall require all subcontractors to procure and maintain insurance policies subject to the requirements of this Exhibit. Failure of SSCA to verify existence of sub-contractor's insurance shall not relieve SSCA from any claim arising from sub-contractors work on behalf of SSCA.